



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

David Huck, Manager, Sustainability and Environmental Systems
Canadian Pacific Railway
120 South 6th Street, Suite 900
Minneapolis, Minnesota 55402
david_huck@cpr.ca

Re: Finding of Violation
Canadian Pacific Railway
Minneapolis, Minnesota

Dear Mr. Huck,

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Canadian Pacific Railway Limited and its subsidiaries (collectively CP, or you) for violating Section 203(a)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(1), and regulations promulgated pursuant to Section 213(a) of the CAA, 42 U.S.C. § 7547(a), that are codified at 40 C.F.R. Part 1033 (Control of Emissions from Locomotives), and 40 C.F.R. Part 1068 (General Compliance Provisions for Highway, Stationary and Nonroad Programs). As summarized in the attached FOV, EPA has determined that CP has failed to comply with the CAA and applicable regulations by selling and offering to sell remanufactured locomotives that were not covered by an EPA-issued Certificate of Conformity.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for CP's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Ethan Chatfield. You may call him at (312) 886-5112 or chatfield.ethan@epa.gov to request a conference. Please direct any legal questions to Chris Grubb at (312) 886-7187 or grubb.christopher@epa.gov. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

Nathan Frank
Chief, Air Enforcement and Compliance Assurance Section IL/IN

Enclosure

cc: Adam Kushner
Hogan Lovells US LLP
adam.kushner@hoganlovells.com

Cory Boeck, Manager
Land and Air Compliance Section
Industrial Division
Minnesota Pollution Control Agency
cory.boeck@state.mn.us

IN THE MATTER OF:)	
)	
Canadian Pacific Railway Limited)	FINDING OF VIOLATION
Minneapolis, Minnesota)	
)	EPA-5-22-MOB-4
Proceedings Pursuant to)	
the Clean Air Act,)	
42 U.S.C. §§ 7401 et seq.)	

The U.S. Environmental Protection Agency (EPA) is issuing this Finding of Violation to Canadian Pacific Railway Limited and its subsidiaries (collectively CP) for violating Section 203(a)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(1), and regulations promulgated pursuant to Section 213(a) of the CAA, 42 U.S.C. § 7547(a), that are codified at 40 C.F.R. Part 1033 (Control of Emissions from Locomotives), and 40 C.F.R. Part 1068 (General Compliance Provisions for Highway, Stationary and Nonroad Programs).

1. Title II of the Clean Air Act (CAA), 42 U.S.C. § 7521 *et seq.*, was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that “the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare . . .” CAA section 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress’s purpose in enacting the CAA included “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population,” and “to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution.” CAA section 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).
2. Section 213(a)(5) of the CAA, 42 U.S.C. § 7547(a)(5), requires EPA to “promulgate regulations containing standards applicable to emissions from new locomotives and new engines used in locomotives. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the locomotives or engines to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.”
3. Section 213(d) of the CAA, 42 U.S.C. § 7547(d), provides that the emissions standards for locomotives and locomotive engines shall be enforced in the same manner as enforcement of emissions standards for new motor vehicles or new motor vehicle engines. The Administrator of

EPA shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under Section 213 of the CAA. *Id.*

4. On April 16, 1998, EPA promulgated emissions standards and associated regulatory requirements for the control of emissions from locomotives and locomotive engines. *See* 40 C.F.R. Part 92 (2020). 63 Fed. Reg. 18998.
5. On June 30, 2008, EPA promulgated revised emissions standards and regulatory requirements for locomotives and locomotive engines. *See* 40 C.F.R. Part 1033. 73 Fed. Reg. 37197.
6. On June 29, 2021, EPA migrated the regulatory requirements from 40 C.F.R. Part 92 to 40 C.F.R. Part 1033, with additional testing and compliance provisions in 40 C.F.R. Parts 1065 and 1068. *See* 86 Fed. Reg. 34373. The Tier 0, Tier 1, and Tier 2 emissions standards originally adopted in Part 92 are now identified in 40 C.F.R. Part 1033, appendix I.
7. 40 C.F.R. § 1033.601 states that locomotive manufacturers/remanufacturers, as well as owners and operators of locomotives subject to the requirements of 40 C.F.R. Part 1033, and all other persons, must observe the provisions of Part 1033, the requirements and prohibitions of 40 C.F.R. Part 1068, and the provisions of the CAA. The provisions of Part 1068 apply to locomotives as specified in that Part, with certain exceptions not applicable here. *See also* 40 C.F.R. § 1033.15(b) (“the requirements and prohibitions of [Part 1068] apply to everyone, including anyone who manufactures, remanufactures, imports, maintains, owns, operates any of the locomotives subject to [Part 1033].”).
8. 40 C.F.R. § 1068.30 states that “‘new’ has the meaning we give it in the standard-setting part. Note that in certain cases, used and remanufactured engines/equipment may be ‘new’ engines/equipment.” 40 C.F.R. Part 1033 is the “standard-setting part” applicable to this matter.
9. 40 C.F.R. § 1033.901 states that “a locomotive or engine becomes *new* if it is remanufactured or refurbished.” (*Emphasis added*).
10. 40 C.F.R. § 1033.901 defines “Remanufacture” as one of the following: (1)(i) to replace, or inspect and qualify, each and every power assembly of a locomotive or locomotive engine, whether during a single maintenance event or cumulatively within a five-year period; (ii) to upgrade a locomotive or locomotive engine; (iii) to convert a locomotive or locomotive engine to enable it to operate using a fuel other than it was originally manufactured to use; (iv) to install a remanufactured engine or a freshly manufactured engine into a previously used locomotive; or (v) to repair a locomotive engine that does not contain power assemblies to a condition that is equivalent to or better than its original condition with respect to reliability and fuel consumption; or (2) remanufacture also means the act of remanufacturing. *See also* 40 C.F.R. § 92.2 (2020).
11. 40 C.F.R. § 1033.901 states that “remanufacturer” has the meaning given to “manufacturer” in Section 216(1) of the CAA with respect to remanufactured locomotives. This term includes any person that is engaged in the manufacturer or assembly of remanufactured locomotives or locomotive engines, such as persons who: design or produce the emission-related parts used in remanufacturing; install parts in an existing locomotive or locomotive engine to remanufacture it; or own or operate the locomotive or locomotive engine and provide specifications as to how

an engine is to be remanufactured (i.e., specifying who will perform the work, when the work is to be performed, what parts are to be used, or how to calibrate the adjustable parameters of the engine.

12. A remanufactured locomotive or locomotive engine under 40 C.F.R. Part 1033 constitutes “new engine/equipment” for purposes of 40 C.F.R. § 1068.101(a).
13. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits manufacturers from importing, selling, offering for sale, introducing or delivering for introduction into commerce (or causing any of the foregoing) any new locomotive unless the locomotive is covered by a certificate of conformity issued by EPA under regulations prescribed by the CAA. *See also* 42 U.S.C. § 7547(d).
14. 40 C.F.R. 40 C.F.R. § 1068.101(a)(1) states that manufacturers may not sell, offer for sale, or introduce or deliver into commerce in the United States or import into the United States any new engine/equipment after emissions standards take effect for the engine/equipment, unless it is covered by a valid certificate of conformity for its model year and has the required label or tag.

Background

15. CP is a Class I railroad company (as defined by the Surface Transportation Board) that owns locomotives operating throughout the United States. CP’s U.S. headquarters office is currently located in Minneapolis, Minnesota.
16. CP is a “person,” as that term is defined in section 302(e) of the CAA, 42 U.S.C. § 7602(e).
17. CP is a “railroad,” as that term is defined at 40 C.F.R. § 1033.901.
18. With respect to the locomotives at issue in this FOV, CP is a “remanufacturer” as that term is defined at 40 C.F.R. § 1033.901 and a “manufacturer” as that term is defined in section 216(1) of the CAA, 42 U.S.C. § 7550(1), and 40 C.F.R. § 1068.30.
19. On November 12, 2021, EPA issued a Finding of Violation (FOV) to CP. Among other violations, the FOV alleged in paragraphs 34 and 40 that CP violated 40 C.F.R. § 1033.601(e) and 40 C.F.R. § 1068.101(a) by placing 86 locomotives it remanufactured back into service without obtaining certificates of conformity for the remanufactured locomotives.
20. Based on EPA’s review of CP’s responses to the FOV, it appears that CP sold and/or offered to sell remanufactured locomotives identified in the November 12, 2021 FOV without obtaining certificates of conformity for those remanufactured locomotives.

Violations

21. CP has violated section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), and 40 C.F.R. 1068.101(a) by selling and/or offering to sell remanufactured locomotives without valid certificates of conformity.

Environmental Impact of Violations

22. These violations may result in excess emissions of particulate matter (PM), nitrogen oxides (NO_x), hydrocarbons, and other air pollutants and contribute to increased ground level ozone concentrations. PM, especially fine particulates containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Additionally, current scientific evidence links short-term NO_x exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Exposure to ground-level ozone can also reduce lung function and inflame lung tissue; repeated exposure may permanently scar tissue.

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division